ORDINANCE NO.

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND, MARYLAND, ENTITLED "AN ORDINANCE TO AUTHORIZE THE EXECUTION OF A MEMORANDUM OF UNDERSTANDING AND DEED FOR THE PURPOSE OF CONVEYING CERTAIN SURPLUS PROPERTY LOCATED AT 627 MARYLAND AVENUE IN THE CITY OF CUMBERLAND, ALLEGANY COUNTY, MARYLAND TO MORETTI CONTRACTORS, LLC."

WHEREAS, Mayor and City Council of Cumberland is the fee simple owner of a certain parcel of real property and the improvements thereon located at 627 Maryland Avenue, in the City of Cumberland, Allegany County, Maryland;

WHEREAS, the said property was declared to be surplus property under the terms of Order No. 25,527, passed by the Mayor and City Council on May 07, 2013;

WHEREAS, the said property as well as the property adjacent to it located at 629 Maryland Avenue were damaged by fire and will be, if they have not already been, demolished;

WHEREAS, Moretti Contractors, LLC, the owner of 629 Maryland Avenue, in accordance with the terms of the Memorandum of Understanding attached hereto and incorporated by reference herein as Exhibit A, has agreed to split equally the demolition costs with the City and to construct a two story two unit residential structure at the location of 627-629 Maryland Avenue in exchange for the City transferring 627 Maryland Avenue to it; and

WHEREAS, the Mayor and City Council of Cumberland deem it to be in the interest of the City to enter into said Contract of Sale and grant the said conveyance.

NOW, THEREFORE

SECTION 1: BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND, MARYLAND, that the Mayor be and he is hereby authorized to execute the Memorandum of Understanding attached hereto as Exhibit A, agreeing to convey the real property and the improvements thereon located at 627 Maryland Avenue, Cumberland, Maryland 21502 to Moretti Contractors, LLC in consideration of Moretti Contractors, LLC splitting the aforesaid demolition costs and constructing the aforesaid residential structure at the location of 627-629 Maryland Avenue;

SECTION 2: AND BE IT FURTHER ORDAINED, that the Mayor and City Clerk be and they are hereby authorized to execute a deed in the form attached to the Memorandum of Understanding or in a similar form, conveying the aforesaid real property and improvements thereon to Moretti Contractors, LLC;

SECTION 3: AND BE IT FURTHER ORDAINED, that the City Solicitor be and he is hereby authorized to execute a HUD-1 or similar closing statement and such other documents as may be required or expedient for the purpose of facilitating and completing the closing for the transfer of the 627 Maryland Avenue in accordance with the terms of the Memorandum of Understanding attached hereto as Exhibit A and he is further authorized to deliver the deed executed by the Mayor and City Clerk to Moretti Contractors, LLC at the said closing; and

SECTION 4: AND BE IT FURTHER ORDAINED, that this Ordinance shall take effect from the date of its passage.

Passed	this 4th	_day of _	June 	, 2013.	
			Juns	h.gl.	
		B.	rian K	Grim, Mayor	
ATTEST:					
Mayor	e lectri				
Marjorie A.	Eirich, Cit	y Clerk			

1 st	reading:	May 07, 2013
2 nd	reading:	June 04, 2013
3 rd	reading:	June 04, 2013
		1000

Passed: **5-0**

EXHIBIT A

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("Memorandum") is made and executed this day of day o

RECITALS:

WHEREAS, the City is the owner of the real property and the improvements thereon located at 627 Maryland Avenue, Cumberland, MD 21502 (the "City Property");

WHEREAS, Moretti is the owner of the real property and the improvements thereon located at 629 Maryland Avenue, Cumberland, MD 21502 (the "Moretti Property");

WHEREAS, the City Property and Moretti Property (collectively, the "Properties") were damaged by a fire and are currently in blighted condition;

WHEREAS, the City recently acquired title to the City Property by means of tax sale foreclosure proceedings;

WHEREAS, the City solicited bids for the demolition of certain properties, including the Properties;

WHEREAS, the successful bidders' fee for the demolition of the Properties is \$8,032.50;

WHEREAS, subject to the terms and conditions set forth hereinafter, the parties have agreed: (1) to split the costs of the demolition of the Properties; (2) that the City will convey the City Property to Moretti; and (3) that Moretti will construct a dwelling house on the Properties; and

WHEREAS, the parties deem the entry into this Memorandum to be in their respective best interests.

WITNESSETH:

NOW, THEREFORE, in consideration of the covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, and intending to be legally bound hereby, the parties, each with full legal capacity and authority, do hereby agree as follows:

- 1. Recitals. The Recitals set forth above are not merely prefatory. They are incorporated by reference herein and form a part of this Contract.
- 2. <u>Demolition</u>. Upon the execution of this Memorandum, Moretii shall pay the City the sum of \$4,016.25, said sum representing one-half of the cost of demolishing the Properties. The City shall be responsible for remitting payment of the full amount of said demolition costs to the contractor who will be performing the work. The City shall endeavor to expedite the demolition of the Properties.

- 3. <u>City Property Transfer</u>. The City Property shall be transferred to Moretti in accordance with and subject to the following terms and conditions.
- 3.1. Closing. The closing for the transfer of the City Property shall occur no later than thirty (30) days after the date of the City's passage of an ordinance authorizing the Mayor to execute a deed transferring the City Property to Moretti. It is expected that such an ordinance shall be passed on or before April 23, 2013. The City shall provide Moretti with notice of the passage of the ordinance as soon as is practicable following its passage.
 - **3.2.** Estate. The City Property is being conveyed in fee simple.
- 3.3. Representations/Warranties. The City makes no representations or warranties with respect to the City Property. It shall be conveyed to the Moretti subject to all defects, title or otherwise, liens, encumbrances or any other matters which may affect the City Property as of the date of Closing and the City shall have no responsibility for rectifying any of the foregoing. In the event there are any defects, title or otherwise, etc. which adversely affect the marketability of the City Property, Moretti must specifically identify the unsatisfactory matter in a writing submitted to the City. The City shall have thirty (30) days to correct the defect at its expense, with the date of closing being extended accordingly. In the event the City is unable or unwilling to cure the defect, Moretti may proceed to closing and accept the City Property with the defect(s) or it may decline to accept title to the City Property. In the event Moretti discovers any such defects, its sole remedy shall be to decline to accept title to the City Property.
- 3.4. <u>Deed.</u> At closing, the City shall transfer the City Property to Moretti by means of a quit claim deed containing a covenant of further assurances, which deed shall be in the form attached hereto and incorporated by reference herein as Exhibit 1. The deed shall recite that the consideration for the transfer is zero dollars (\$0.00) due to Moretti's obligation to construct improvements on the Properties, said improvements being more particularly described in the Exhibit 1 attached hereto. The deed shall include provisions for the reversion of title to the City in the event the improvements are not completed and conditions relative to the said completion are not satisfied within two (2) years of the date of the deed.
- 3.5. Closing Costs and Prorations. Moretti shall be responsible for the prorated portion of the real estate taxes for the City Property for the current tax year from the date of closing through the end of the current tax year and it shall assume responsibility for said real estate taxes for each year thereafter. Moretti shall have no liability for any water or sewer charges which may be due with respect to the City Property as of the date of closing. With respect to the closing and the matters incidental thereto, each of the parties hereto shall bear the expense of their own attorneys' fees.
- 3.6. Recordation & Transfer Taxes and Fees. Moretti shall pay all recordation and transfer taxes and fees due on account of the recordation of the deed effecting the transfer of the City Property to it. It is understood that, although the deed will recite that the City Property is being transferred to Moretti without monetary consideration, it is conceivable that the court will require that recordation and transfer taxes be paid.
- 4. <u>Jury Trial</u>. THE PARTIES HERETO WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH EITHER OF THEM MAY BE PARTIES ARISING OUT OF OR IN ANY WAY PERTAINING TO THIS MEMORANDUM. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF

ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS MEMORANDUM.

- 5. <u>Gender/Tense/Conjugation</u>. The use of any gender, tense, or conjugation herein shall be applicable to all genders, tenses and conjugations. The use of the singular shall include the plural and the plural shall include the singular.
- 6. <u>Captions</u>. The captions and various sections and paragraphs of this Memorandum have been inserted only for the purposes of convenience. Such captions are not a part of this Memorandum and shall not be deemed in any manner to modify, explain, enlarge or restrict any of the provisions of this Memorandum.
- 7. Governing Law. This Memorandum shall be governed and construed in accordance with the laws of the State of Maryland without regard to principles of conflict of laws. It shall be enforceable with an action commenced in the Circuit Court for Allegany County, Maryland or the District Court of Maryland for Allegany County and the parties hereto agree to be subject to the jurisdiction of such courts and further waive any claim that any action or proceeding arising out of or relating to this Memorandum and commenced in such courts is commenced in an inconvenient forum or a forum lacking proper venue.
- 8. <u>Severability</u>. Should any provision of this Memorandum be found, held or deemed to be unenforceable, voidable or void, as contrary to law or public policy under the laws of Maryland or any other state of the United States, the parties intend that the remaining provisions of this Memorandum shall nevertheless continue in full force and be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns.
- 9. <u>Binding Effect</u>. This Memorandum shall be valid and binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns.
- 10. <u>Attorneys' Fees</u>. In the event of an action to enforce the provisions of this Memorandum, the party determined to be in breach shall be responsible for paying the reasonable legal fees and expenses incurred by the prevailing party; provided that the prevailing party shall be deemed to be the party determined not to be in breach as of the last appeal taken, if any.
- 11. <u>Entire Agreement</u>. This Memorandum constitutes and contains the entire agreement and understanding among the parties and may not be modified except in a subsequent writing signed by all parties hereto.
- 12. <u>Assignment</u>. Moretti may not assign its rights under this Memorandum to any third parties except upon the City's written consent, said consent not to be unreasonably withheld.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals to this Memorandum of Understanding, the day and year first above written.

WITNESS/ATTEST:

EXHIBIT 1

THIS QUITCLAIM DEED, made this day of day of day of day, 2013, by and between MAYOR AND CITY COUNCIL OF CUMBERLAND, a Maryland municipal corporation, party of the first part, and MORETTI CONTRACTORS, LLC, a Maryland limited liability company, party of the second part.

WITNESSETH:

WHEREAS, the party of the second part is the owner of the property located at 629 Maryland Avenue, Cumberland, Maryland 21502, which property is adjacent to the property being conveyed under the terms of this deed, i.e., 627 Maryland Avenue, Cumberland, Maryland 21502; both properties hereinafter being referred to collectively as the "Properties";

WHEREAS, the improvements on the Properties were severely damaged by fire and were or will be demolished at the shared expense of the parties hereto; and

WHEREAS, the party of the first part has agreed to convey the property located at 627 Maryland Avenue to the party of the second part on the condition that the party of the second part construct a residential dwelling on the Properties, subject to the terms and conditions set forth hereinafter, thereby eliminating the blight and returning the Properties to tax revenue generating condition.

NOW THEREFORE, that for and in consideration of the sum of Zero Dollars (\$0.00) and for other good and valuable considerations, the receipt of all of which is hereby acknowledged, the party of the first part does hereby quitclaim to the parties of the second part, their personal representatives, heirs and assigns, all of the party of the first part's right, title, interest and estate in and to the following described pieces or parcels of real estate lying and being in the City of Cumberland, Allegany County, Maryland, to wit:

ALL THAT lot, piece or parcel of ground lying and being on the westerly side of Maryland Avenue in Cumberland, Election District No. 4, Allegany County, Maryland, known as No. 627 Maryland Avenue, being one-half of a double house known as 627-629 Maryland Ave and more particularly described as follows:

BEGINNING for the same at a point distant north 25 degrees east 115.45 feet from the northwest intersection of Maryland Avenue and Spring Street (beginning point being also at the end of the first line of deed of No. 629 Maryland Ave from Thomas N. Berry unto James O. Dawson, dated October 29, 1957, and recorded in Liber 294, Folio 16), and running thence with Maryland Avenue north 25 degrees east 13.85 feet to a chiseled point in the center of a 2.4 foot joint walkway between Lots 627 and 629 Maryland Ave, thence with the center line of said walkway and continuing beyond north 65 degrees west 100 feet to a post on the east side of Walnut Alley, then with said alley line south 25 degrees west 13.85 feet to a point where the continued line is drawn through the center line of the partitioned wall dividing the double dwelling known as 627-629 Maryland Avenue, thence with said line through the center of the partition south 65 degrees east 100 feet to a point on Maryland Avenue (said line being the second line reversed of the aforesaid deed of 619 Maryland Avenue, to the point of beginning.

IT BEING the same property conveyed from Jason M. Bennett, Director of Finance of Allegany County, Maryland, to Mayor and City Council of Cumberland by Deed dated February _____, 2013 and recorded among the Land Records of Allegany County, Maryland in Book _____, Page ____.

TOGETHER with the buildings and improvements thereon, and the rights, roads, ways, waters, privileges and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the above-described property unto the party of the second part, its successors and assigns, in fee simple.

In connection with the foregoing conveyance, the party of the first part and the party of the second part covenant and agree as follow:

- 1. The party of the second part shall construct a two (2) story, two (2) unit residential dwelling on the Properties which will be of frame construction, have off-street parking in the rear of the structure and will comply with all applicable codes and ordinances. The party of the second part shall be responsible for completing the construction of the structure and parking area and obtaining an occupancy permit therefor no later than two (2) years from the date of this Deed.
- 2. The party of the first part and its designees shall have the right to inspect the Properties from time to time in order to ensure that the work described in paragraph 1 above is progressing and is

being performed and completed in the manner described herein; provided, however, that the party of the first part shall endeavor to give the party of the second part no less than seventy-two (72) hours advance notice of any such inspections. The party of the second part shall fully cooperate with the party of the first part and its designees in regard to the scheduling and conduct of the inspections.

- 3. The party of the second part may not convey the Properties or any interest therein (aside from a security interest granted subject to these covenants, restrictions and agreements) to a third party until all of the conditions set forth in paragraph 1 are completed in accordance with the terms and provisions set forth therein. Any such conveyance or attempt at such conveyance shall be null and void.
- 4. In the event the property is not reconveyed to the party of the first part within four (4) years of the date of this deed, as such date is first written above, in accordance with the hereinafter set forth provisions, the repairs and/or improvements described above shall be deemed to have been completed in accordance with the terms and provisions set forth above, and the party of the first part shall forfeit its hereinafter-described rights of reverter.
- 5. Should the party of the second part fail to comply with the terms and provisions of paragraph 1 hereinbefore, the title to the real property and improvements conveyed by the terms of this deed (627 Maryland Avenue) shall immediately and without the necessity of any further action on the part of the party of the first part, revert and revest in the party of the first part, and the party of the second part shall lose and forfeit all of its rights, title and interest in and to the said property and to the improvements, fixtures, rights, roads, ways, waters, privileges and appurtenances thereunto belonging or in anywise appertaining, and the party of the first part shall have the right of re-entry to the said property.
- 6. In furtherance of the terms and provisions set forth in the preceding paragraph, the party of the second part, through its members, hereby appoints Jeffrey D. Rhodes, City Administrator of the City of Cumberland, and his successor City Administrators, its true and lawful attorney-in-fact, with

full power of substitution, hereby granting it full power and authority for it and in its stead to execute and deliver a deed or deeds to the hereinbefore-described property to the party of the first part in the event the party of second part fails to comply with the terms and provisions set forth in paragraph 1 hereinbefore and to do any and all acts required in order to effect the conveyance of the hereinbefore-described property to the party of the first part in the event the party of the second part fails to comply with the said terms and conditions. Alternatively, the party of the second part hereby authorizes and empowers Jeffrey D. Rhodes, City Administrator of the City of Cumberland, and his successor City Administrators to execute and deliver a deed or deeds to the hereinbefore-described property to the party of the first part in the event the party of second part fails to comply with the terms and provisions set forth in paragraph 1 hereinbefore and to do any and all acts required in order to effect the conveyance of the hereinbefore-described property to the party of the first part in the event the party of the second part fails to comply with the said terms and conditions. The terms and provisions of this paragraph 6 shall not be subject to revocation except upon the written consent of the party of the first part; however, notwithstanding the foregoing, they shall expire on the date set forth in paragraph 4

7. Once the improvements identified in paragraph 1 above have been made to the satisfaction of the party of the first part, upon the request of the party of the second part, the party of the first part shall deliver a deed to the party of the second part which shall effect the surrender of the rights of reverter as described herein.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their respective names and under seal and duly attested all on the day and date first above written.

MAYOR AND CITY COUNCIL OF CUMBERLAND

	By:	(SEAL
Marjorie A. Eirich, City Clerk	Brian K. G	rim, Mayor

above and shall be of no further force and effect after that date.

WITNESS/ATTEST:

STATE OF MARYLAND, NONTGOMERY COUNTY, TO WIT:

I HEREBY CERTIFY, that on this day of day of

My Commission Expires: fuel 6, 2016

STATE OF MARYLAND, MONTGOMERY COUNTY, TO WIT:

I HEREBY CERTIFY, that on this day of day of day, 2013, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Anna Moreta, known to me or satisfactorily identified to be the person whose name is subscribed to the within instrument, one of the four members of Moretti Contractors, LLC, a Maryland limited liability company, and acknowledged the foregoing to be the act and deed of the said limited liability company; and at the same time made oath she is duly authorized by it to make this acknowledgment.

WITNESS my hand and Notarial Seal.

NOTARY PUBLIC

My Commission Expires: free 16, 2016

STATE OF MARYLAND, MONTGOMERY COUNTY, TO WIT:

I HEREBY CERTIFY, that on this day of day of day, 2013, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Victoria Moreta, known to me or satisfactorily identified to be the person whose name is subscribed to the within instrument, one of the four members of Moretti Contractors, LLC, a Maryland limited liability company, and acknowledged the foregoing to be the act and deed of the said limited liability company; and at the same time made oath she is duly authorized by it to make this acknowledgment.

WITNESS my hand and Notarial Seal.

NOTARY PUBLIC

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My Commission Expires: 18 2016	ga Andrinanga andrinan
STATE OF MARYLAND,	
MONTGOMERY COUNTY, TO WIT:	
I HEREBY CERTIFY, that on this day of day of subscriber, a Notary Public of the State and County aforesaid, personally known to me or satisfactorily identified to be the person whose name instrument, one of the four members of Moretti Contractors, LLC, company, and acknowledged the foregoing to be the act and deed of the sand at the same time made oath he is duly authorized by it to make this act witnesses my hand and Notarial Seal.	appeared Alexander Moreta, e is subscribed to the within a Maryland limited liability said limited liability company:
NOTARY PUBLIC	
My Commission Expires: 16,2016	
STATE OF MARYLAND,	
MONTGOMERY COUNTY, TO WIT:	• •
I HEREBY CERTIFY, that on this day of subscriber, a Notary Public of the State and County aforesaid, personally known to me or satisfactorily identified to be the person whose name instrument, one of the four members of Moretti Contractors, LLC, company, and acknowledged the foregoing to be the act and deed of the sand at the same time made oath he is duly authorized by it to make this act witness my hand and Notarial Seal. NOTARY PUBLIC My Commission Expires:	appeared Jonathan Moreta e is subscribed to the within a Maryland limited liability said limited liability company:
I HEREBY CERTIFY that the within and foregoing document w supervision of, the undersigned, a Maryland attorney, and that no title sea connection with its preparation.	vas prepared by, or under the

MICHAEL SCOTT COHEN

WITNESSES TO SIGNATURE OF VICTORIA MORETA, MEMBER,	
MORETTI CONTRACTORS, LLC:	
Alice'	(SEAL)
ALINA R. MIHA	
printed name 1380 + RENWICK TERRACE, HAGERSTOWN, MD 21740 address	
2536 Fera Allow Way - Carthology printed name MD 20836	
address	
WITNESSES TO SIGNATURE OF ALEXANDER MORETA, MEMBER, MORETTI CONTRACTORS, LLC:	
Aliai	(SEAL)
ALINA R. MIHH	
printed name 13804 RENWICK TERRACE, HAGERSTOWN, MD 21740.	
address	
Mocelot Koufres	
P536 For Hollow Way- Con tholas	
address HD - Zo 996	

WITNESSES TO SIGNATURE OF JONATHAN MORETA, MEMBER,
MORE TI CONTRACTORS, LLC:
(SEAL)
ACINA R. MIHA
printed name
13807 RENWICK TERRACE, HAGERSTOWN, HD 21440.
address /
Totherel
POCT 11/1 +1 C. II of so
9536 For Hollow Way Good Hashing printed name of - 3588.
of h = 20886
Marcolo Pougra
address
STATE OF MARYLAND, MONTGOMERY COUNTY, TO WIT:
MONIGOMERI COUNTI, TO WIT:
I HEREBY CERTIFY, that on this day of, 2013, before me, the
subscriber, a Notary Public of the State and County aforesaid, personally appeared Brian K. Grin known to me or satisfactorily identified to be the person whose name is subscribed to the within
instrument, the Mayor of Mayor and City Council of Cumberland, a municipal corporation of the State
of Maryland, and acknowledged the foregoing to be the act and deed of the said Mayor and Cit
Council of Cumberland; and at the same time made oath he is duly authorized by it to make the acknowledgment; and he further certified under the penalties of perjury that the actual consideration
for the foregoing conveyance is \$0.00; and he further he further made oath in due form of law that the
transaction is not subject to the provisions of Section 10-912 of the Tax General Article of the
Maryland Annotated Code as the grantor is a resident of the State of Maryland. WITNESS my hand and Notarial Seal.
NOTARY PUBLIC
My Commission Expires:

WITNESSES TO SIGNATURE OF PABLO MORETA, MEMBER, MORETTI CONTRACTORS, LLC:	
Avai	(SEAL)
ALINA R. MIHAI printed name 1580+ RENNICK TERRACE, HAGERSTO WN, HD 21740 address / /	
Arcalo F Kov F108	
9536 Fau Hollow Wy Graham/ address 4D - 20886	
WITNESSES TO SIGNATURE OF ANNA MORETA, MEMBER, MORETTI CONTRACTORS, LLC:	
Atai	(SEAL)
HINA R. MIHHiprinted name	
13804 RENWICK TERRACE, HAGERSTOWN, MD 21440 address	
Ale	
Procest to Rougiss printed name 9536 Forn Hollow Way - Garthaston address 10 - 20 886	